

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Terrell Addison,)	C/A NO. 0:13-744-CMC-PJG
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
SCDC; Lt. Albert L. Mack; Sgt. Monique)	
Steward; OFC Mack Risher; OFC Terrance)	
Jackson; OFC Jones; OFC Green;)	
OFC Bradley; Jennifer Scott, et al.)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On August 13, 2013, the Magistrate Judge issued a Report recommending that Defendant "SCDC" be dismissed from this matter without prejudice and without service of process. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report and a motion for appointment of counsel on September 4, 2013.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Report. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff indicates that he needs "more time to do my appeal. The time was too short!" Obj. at 1 (ECF No. 29). However, this response to the Report does not address the legal infirmity of Plaintiff's complaint, namely, that SCDC is not a "person" amenable to suit under 42 U.S.C. § 1983.¹

Plaintiffs in civil rights cases brought under 42 U.S.C. § 1983 do not have a right to court appointed counsel. *Hardwick v. Ault*, 517 F.2d 295 (5th Cir. 1975). However, the court has discretionary authority to appoint counsel "in exceptional cases," in a civil action brought by a litigant proceeding *in forma pauperis*. *Cook v. Bounds*, 518 F.2d 779 (4th Cir. 1975); 28 U.S.C. § 1915(d). Plaintiff's complaint does not present unusual circumstances to justify the appointment of counsel, nor will Plaintiff be denied due process if an attorney is not appointed. Therefore,

¹To the extent Plaintiff's response is construed as a motion for extension of time to respond to the Report, it is **denied**. Plaintiff cannot bring suit against Defendant SCDC in this court because SCDC is "an arm of the state," and the State of South Carolina has not consented to suit in a federal court. See S.C. Code Ann. § 15-78-20(e) (1976) (statute expressly provides that the State of South Carolina does not waive Eleventh Amendment immunity, consents to suit only in a court of the State of South Carolina, and does not consent to suit in a federal court or in a court of another State).

Plaintiff's motion for appointment of counsel is **denied**.

Accordingly, Defendant "SCDC" is dismissed from this matter without prejudice and without issuance and service of process. This matter is returned to the Magistrate Judge for further pretrial proceedings.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 11, 2013